IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

Crl.Rev.Pet.No. 978 of 2000(B)

CRL.A.NO.440/1996 OF THE VTH ADDL.SESSIONS COURT, ERNAKULAM
C.C.NO.118/1991 OF ADDL.CHIEF JUDICIAL MAGISTRATE (E & O),ERNAKULAM

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PETITIONER/APPELLANTS/ACCUSED:

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1. **T.T. ANTONY, S/O. T.A. THOMAS,**
   THEKKINEDATHU HOUSE,
   CONVENT ROAD, NORTH PARUR,
   ERNAKULAM DISTRICT.

2. **T.A. JOHNY, S/O. T.J. ANTONY,**
   THEKKINEDATH HOUSE,
   NEAR JEWS STREET,
   NORTH PARUR, ERNAKULAM DISTRICT.

BY ADV. SRI.B.RAMAN PILLAI.

RESPONDENTS/COMPLAINANT & STATE:

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1. **THE ASSISTANT COLLECTOR OF CENTRAL EXCISE,**
   TRICHUR DIVISION, REPRESENTED BY THE
   CENTRAL GOVERNMENT STANDING COUNSEL,
   HIGH COURT OF KERALA.

2. **STATE OF KERALA, REPRESENTED BY THE**
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/09/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P. NO. 5849/2000 IN CRL.R.P. 978/2000

DISMISSED

24/09/2007. **SD/- K.R.UDAYABHANU, JUDGE.**

//TRUE COPY//

prv.

K.R. UDAYABHANU, J.

CRL.R.P.NO. 978 OF 2000

DATED THIS THE 24th September 2007

ORDER

The revision petitioners are the accused in C.C.No.118/1991 in the court of Addl. Chief Judicial Magistrate(Economic offences), Ernakulam who stands convicted for the offence under Section 135(i)(ii) of the Customs Act and sentenced to pay a fine of Rs.15,000/- and Rs.10,000/- respectively and in default to undergo simple imprisonment for six months and three months each. The prosecution case is that on 29-8-1999 at about 3.30 p.m. the accused were apprehended by the customs officials in the premises of Thiruvanchikulam temple premises at Kodungalloor when they come over there in response to the proposal of the customs officials impersonating as intended buyers to purchase gold biscuits of foreign origin and that the accused were taken to the Central Excise Divisional office, Trichur and the packet handed over by the accused to the customs officials contained three gold biscuits of foreign origin which altogether valued 349.500 grams.

2. The evidence adduced consisted of the testimony of PWs.1 to 7 and Exts.P1 to P7. The defence got marked Ext.D1.

3. The case of the defence is that the revision

petitioner/accused were riding on a motor cycle and when they reached near the alleged place they happened to see a person in the custody of other 3 to 4 persons and also there was an altercation among them and they stopped at the place and that at the time the person in custody escaped and the accused were taken into custody.

4. The evidence in support of the prosecution consisted of the testimony of Pws.1 to 5, the customs officials who constituted in the detecting squad and Pws.4 and 7, the independent witnesses. Pws.4 and 7 do not support the prosecution version and were treated as hostile, although they have admitted their signature in Ext.P2 mahazar. PW2, the goldsmith and PW3, the chemical examiner of Customs, Cochin have proved as to the quality of the contraband seized. Apart from the evidence of Pws.1 and 5, it is the statement of the accused under Section 108 of the Customs Act, i.e.Exts.P3 and P4 that has been relied on by the prosecution. It is alleged that the evidence of Pws.1 and 5 contained discrepancies and that even though the authorities in adjudication proceedings imposed penalty only on A1, no penalty was imposed on A2. Even as per the prosecution witnesses with respect to the transaction and as to the handing over of the contraband is that was when A1 and A2 were only sitting in the

motor cycle. It is stressed that they have been convicted on the basis of Ext.P4 confession statement. There is a recital that A1 had agreed to give A2 a share of the profits.

On a consideration of the evidence adduced in the matter, I find that the only positive evidence against A2 is the solitary recital in Ext.P4 of A1 as to the promise to give him a share of profit. I find that the role of A2 in the F.I.R is confined to the above recital in Ext.P4. In the circumstances I find that the 2nd accused is entitled to benefit of doubt. All the same, I find that the evidence against A1 contains no serious infirmities so as to discard the prosecution version. In the circumstances, the conviction and sentence imposed on A1 is confirmed and the conviction and sentence on A2 is set aside. The second accused will stand acquitted. The conviction and sentence imposed on the first accused is confirmed. The revision petition is allowed in part.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P. NO. 978 of 2000

ORDER

24-9-2007